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February 6, 2015

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: ***Applications of Comcast Corp., Time Warner Cable Inc., Charter Communications, Inc., and SpinCo for Consent to Assign or Transfer Control of Licenses and Authorizations,*** **MB Docket No. 14-57**

Dear Ms. Dortch:

On February 4, 2015, David L. Cohen, Executive Vice President of Comcast Corporation ("Comcast"), and the undersigned met with Maria Kirby, Legal Advisor to Chairman Wheeler, and Hillary Burchuk of the Office of General Counsel to discuss Comcast's transaction with Time Warner Cable Inc. ("TWC") and related exchange of systems with Charter Communications, Inc. (collectively, the "Transaction").[1]

We emphasized the Transaction's many compelling pro-consumer and pro-competitive benefits, as detailed in Applicants' public interest filings,[2] including: accelerated digital upgrades for the acquired systems; accelerated deployment of some of the industry's fastest broadband speeds, best-in-class video technology and user interface, the most robust and advanced video on-demand and TV Everywhere experience; enhanced competition in the business services market; extension of Comcast's leading diversity, accessibility, and community outreach programs; and the expansion of Comcast's acclaimed *Internet Essentials* broadband adoption program. As Comcast explained in its Opposition and Response and Reply to Reponses, it will bring these benefits to the acquired systems within 12

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[1] *See Commission Seeks Comment on Applications of Comcast Corporation, Time Warner Cable Inc., Charter Communications, Inc., and SpinCo to Assign and Transfer Control of FCC Licenses and Other Authorizations*, Public Notice, 29 FCC Rcd. 8272 (2014).

[2] *See* Applications and Public Interest Statement of Comcast Corporation and Time Warner Cable Inc., MB Docket No. 14-57 (Apr. 8, 2014) ("Comcast-TWC Public Interest Statement"); Public Interest Statement of Comcast Corporation and Charter Communications Inc., Charter-to-Comcast Exchange Transaction, MB Docket No. 14-57 (June 4, 2014); Public Interest Statement of Charter Communications, Inc. and Comcast Corporation, Comcast-to-Charter Exchange and Sale Transactions, MB Docket No. 14-57 (June 4, 2014); Public Interest Statement of SpinCo, Charter Communications, Inc., and Comcast Corporation, Spin Transaction, MB Docket No. 14-57 (June 4, 2014).

months of the closing of the Transaction for most services in several markets, and within 36 months for *all* services in *all* markets.[3]

We noted that these benefits – the advanced products and services like the X1 platform and cutting-edge accessibility features like the "talking guide" – are a direct result of Comcast's culture of innovation, which is fostered by its dedication to investment and research and development. Comcast will bring this same commitment to investment and innovation to the acquired systems. This culture and commitment will ensure that the required investments will be made substantially faster than they would or could be made by TWC.

In the area of business services, we discussed how the added scale and enhanced geographical rationalization from the Transaction will enable Comcast to compete better for medium-sized, regional, super-regional, and even enterprise businesses – market segments that have been served largely by incumbent telco providers and that present challenges for any geographically limited cable company. Here, too, greater scale will spur investment by improving the economics of building out to new businesses and deploying fiber and high-capacity technology to support such customers, which in turn will improve the overall network.[4]

Next, we discussed Comcast's commitment to diversity and its best-in-class diversity and inclusion program, which have become part of the company's DNA. We noted that Comcast has an unmatched record of promoting diversity across all aspects of the company, including in governance, workforce recruitment and retention, procurement, programming, and philanthropy and community investment.[5] We are enthusiastic about bringing this robust commitment to corporate and social responsibility to the additional communities we will be serving after the Transaction.

We also highlighted Comcast's successful and nationally acclaimed *Internet Essentials* broadband adoption program and how Comcast has refined, studied, and improved it over the past three plus years – and then voluntarily extended it indefinitely.[6] Contrary to the unfounded claims of certain critics (which have been rejected not only by Comcast, but more importantly by many local governmental, non-profit, and civic leaders), the extension of *Internet Essentials* to numerous additional communities that Comcast will serve as a result of the Transaction is indisputably a substantial public interest benefit.[7]

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[3] *See* Comcast Corporation and Time Warner Cable Inc., Opposition to Petitions to Deny and Response to Comments, MB Docket No. 14-57, at 2 (Sept. 23, 2014) ("Opposition and Response"); Comcast Corporation and Time Warner Cable Inc., Reply to Responses, MB Docket No. 14-57, at 3 (Dec. 23, 2014) ("Reply").

[4] *See* Opposition and Response at 68-74; Comcast-TWC Public Interest Statement at 90-100; *see also* Reply at 18-19; Letter from Kathryn A. Zachem, Comcast, to Marlene H. Dortch, FCC (Dec. 5, 2014) (providing concrete examples of multi-location enterprise and super-regional businesses that Comcast is not able to compete for today but that it would be able to compete for post-transaction given the enhanced footprint and greater operational and cost efficiencies of the combined company).

[5] *See* Opposition and Response at 92-96.

[6] *See id.* at 50-59.

[7] *See id.*; Comcast-TWC Public Interest Statement at 62-66.

As Applicants have previously explained, these many public interest benefits present a compelling case for approval of the Transaction, and are largely undisputed in the record before the Commission.[8]

By contrast, the claimed harms raised in the proceeding are speculative, unsubstantiated, and in most cases not even remotely transaction-specific. With respect to broadband competition, we emphasized that the Transaction will in no way reduce broadband competition or the number of broadband choices available to consumers.[9] As a preliminary matter, we noted that that there is no national broadband "market" and that the correct relevant geographic market is *local*, as both the Commission and DOJ have consistently recognized on multiple occasions. An assessment of the Transaction's effects on broadband competition must focus on whether there is any reduction of competitive choices for consumers, and consumers do not choose broadband providers at the national level. Because Comcast and TWC serve almost entirely distinct geographic areas and do not compete in any relevant market for Internet access services, the Transaction will not harm broadband competition.[10]

We also addressed mistaken calls, in light of the Commission's recent 706 Report and associated statements, for the Commission to utilize a 25 Mbps speed threshold for purposes of analyzing the competitive effects of this Transaction. The 25 Mbps baseline downstream speed in the Commission's new definition of "*advanced* telecommunications capability" under the statute is not designed or intended to be a *market* definition, but rather is a future-oriented and aspirational policy goal to foster broadband deployment where it is wanting. As Chairman Wheeler explained in his statement about the report, "'advanced' means at the forefront, progressive, cutting-edge. It doesn't mean the average or the happy medium."[11] The aspirational aspect and purpose of this standard are clear. As Chairman Wheeler went on to say, the 25 Mbps definition "will hopefully serve as an impetus for meaningful improvements in the speed and availability of true high-speed networks for all Americans. We know where we need to be. Now we need to do the hard work to get there."[12]

Comcast applauds the Commission's and Chairman's efforts to encourage the deployment and adoption of faster broadband speeds. As a company, that is precisely what we have been doing, with 85 percent of our current broadband customers already receiving speeds of 25 Mbps or greater downstream. But for purposes of defining the relevant broadband market in the competitive analysis of the Transaction, a 25 Mbps speed cut-off is inappropriate and unjustified, as it does not reflect the broadband services that most Internet Service Providers are commonly delivering and consumers are commonly enjoying today. A market definition that excludes all broadband services below 25 Mbps

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8 *See* Opposition and Response at 26-113; *see also id.*, Exhibit 1, Reply Declaration of Dr. Mark A. Israel ¶ 208 ("Israel Reply Decl."); *id.*, Exhibit 3, Declaration of Dr. Dennis Carlton ¶¶ 5-8; Reply at 13-23.

9 *See* Opposition and Response at 116-21, 145; Reply at 41-50.

10 *See* Opposition and Response at 116-21, 145; Reply at 41-50.

11 Statement of Chairman Tom Wheeler, *Inquiry Concerning the Development of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket Nos. 14-126 and 12-228 (rel. Jan. 29, 2015).

12 *Id.*

ignores significant competition at multiple broadband speeds that Comcast and TWC face in their footprints.[13] Nor are Online Video Distributors ("OVDs") limited in their provision of content to broadband providers delivering speeds of 25 Mbps or higher, as some have claimed.[14] Rather, those consumers watching one stream of the OVD's content at 4 Mbps (or less) or several streams at 12 Mbps are fully participating in the OVD marketplace. Thus, in neither the retail broadband market nor in the content distribution market is a national 25 Mbps broadband share a meaningful metric.[15]

Yet, even if one were to ignore the record evidence and assume a national broadband "market" with a baseline speed of 25 Mbps, we noted that the key conclusion is that the Transaction has very little effect on competition. Based on the latest broadband data released by the Commission (as of December 2013), Comcast's share of broadband subscribers at or above these speeds would increase by only one percent after the Transaction.[16] This change is even smaller when factoring in mobile broadband subscribers.[17] If anything, the aspirational goal of the 25 Mbps speed threshold illustrates a key benefit of the Transaction. As of December 2013, over 17 million (approximately 85 percent) Comcast broadband customers enjoyed speeds of at least 25 Mbps – a figure that has grown since that time.[18] By upgrading TWC's broadband facilities faster than TWC could on its own, the Transaction will enhance and drive *greater* broadband competition from AT&T, Verizon, Google, CenturyLink, and others.[19]

We also stressed that Comcast has no incentive to harm edge providers, especially given how complementary they are to Comcast's higher-growth broadband business. Nor does Comcast have any ability to harm them at the point of interconnection (or anywhere else). The Internet backbone marketplace is highly competitive, and any edge provider that wants to deliver traffic to Comcast's customers can hand its traffic off to one of dozens of other providers that already have routes into Comcast's network, and need never deal directly with Comcast, which is precisely what the vast majority of edge providers do. Given that transit prices have fallen by over 99 percent on a per-Mbps basis since 1998 and continue to fall – a market development to which Comcast's multi-billion dollar investment in its backbone facilities over the past decade has significantly contributed – there is no question that the backbone market is robustly competitive across various modalities of interconnection.[20] The Transaction will not change this market reality.[21]

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13 Opposition 122-33; Reply at 48-60.

14 *See* Dish Reply Comments at 34-38; Netflix Reply Comments at 27-29. *But see* Opposition and Response at 21 (noting that the fastest ISP on Netflix's speed rankings averaged less than 4 Mbps, demonstrating that a 4 Mbps connection is sufficient to handle streaming of HD video).

15 *See* Opposition and Response at 122-37; Israel Reply Decl. ¶¶ 21-26.

16 Reply at 49-50, Exhibit B. This calculation uses the same December 2013 data the Commission analyzed in its recent staff memo on broadband shares. *See* Memorandum from William Lake, Media Bureau, to Marlene H. Dortch, FCC (Dec. 9, 2014).

17 Reply, Exhibit B.

18 *See* Comcast-TWC Public Interest Statement at 33; *id*, Exhibit 6, Declaration of Dr. Mark A. Israel ¶ 168.

19 Comcast-TWC Public Interest Statement at 42-59; Opposition and Response at 43-50; Reply at 16.

20 *See* Opposition and Response at 212-23; Reply at 54-61.

21 *See* Opposition and Response at 148-49; Reply at 54-61.

With regard to the video programming marketplace, we stated that the combined company's share of managed residential subscribers will be below the prior 30 percent cap under the Commission's twice-rejected horizontal ownership rules,[22] and approximately the share approved by the Commission in the *AT&T Broadband* and *Adelphia* transactions. And in today's fiercely competitive video distribution marketplace, it is content providers that enjoy significant bargaining leverage. Despite already being the largest MVPD in the country, Comcast finds itself often making concessions to programmers on pricing and distribution that it would not necessarily have made even a few years ago. Adding approximately seven million video subscribers is not going to materially alter Comcast's bargaining leverage with programmers.[23] In addition, we explained that there is no support for claims that the Transaction will lead Comcast to use its programming to disadvantage competing distributors, or to favor its own programming, as Drs. Rosston and Topper have demonstrated with extensive econometric analyses and other marketplace evidence.[24]

We also addressed inaccurate claims in the record that Comcast will "control" over 90 percent of Hispanic households. This figure is just a misstated "homes passed" figure – has nothing to with "control" – and is overstated at that. The key point is that nearly every one of those homes has at least three MVPD choices, and many have four or five (that is, by the same logic, DirecTV and Dish Network both "control" virtually 100 percent of Hispanic households).[25] In this robustly competitive marketplace, Comcast will have every incentive to provide Hispanic households with compelling programming in compelling packages – as it does today by carrying more unaffiliated Hispanic-oriented channels and more independent Hispanic-oriented channels than any other cable MVPD (including TWC).

Finally, we stressed the importance of closely scrutinizing whether opponents' claimed harms are truly transaction-specific (whatever their merits), and rigorously filtering out those that are not. Indeed, many parties are attempting to leverage the Commission's processes for individual company financial interests. The Commission should take into account the motives underlying opponents' proposals and suggested conditions, because motives can inform credibility. We noted that many opponents' proposed conditions are designed (in some cases, transparently so) to achieve preexisting and parochial business interests. We stressed that regulation intended to help competitors but not competition will only end up distorting the marketplace and harming consumers.

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[22] *See Comcast Corp. v. FCC*, 579 F.3d 1 (D.C. Cir. 2009); *Time Warner Entm't Co., L.P. v. FCC*, 240 F.3d 1126 (D.C. Cir. 2001).

[23] Opposition and Responses at 148-59.

[24] *Id.* at 239-62; *id.*, Exhibit 2, Reply Declaration of Dr. Gregory L. Rosston and Dr. Michael D. Topper, ¶¶ 83-104; 211-235.

[25] *See* Opposition and Response at 160 n.499.

Please direct any questions to the undersigned.

Respectfully submitted,

/s/ Kathryn A. Zachem

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cc: Hillary Burchuk
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